

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Innovative Facility Services, LLC and Local 3, Retail, Wholesale and Department Store Union, UFCW. Case 2–CA–37949

January 18, 2007

DECISION AND ORDER

BY MEMBERS SCHAUMBER, KIRSANOW, AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 26, 2006, the General Counsel issued the complaint on November 3, 2006, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 2–RC–23113. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting an affirmative defense.

On November 30, 2006, the General Counsel filed a Motion for Summary Judgment. On December 4, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a wholly owned subsidiary of Kellermeyer Building Services, LLC, and is a limited liability company incorporated in the State of Delaware, with its principal office and place of business in Maumee, Ohio. The Respondent is engaged in providing housekeeping and janitorial services in New York, New York, including at a facility located at 504 Broadway, New York, New York, the only facility involved herein.

Annually, in the course and conduct of its business operations described above, the Respondent provides services valued in excess of \$50,000 to Bloomingdales and other companies which are located in the State of New York and are directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 3, Retail, Wholesale and Department Store Union, UFCW (the Union) is a labor organization within the meaning of Section 2(5) of the Act.¹

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held June 26, 2006, the Union was certified on September 28, 2006, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All nonsupervisory housekeeping employees employed by the Employer at the Bloomingdale’s store located at 504 Broadway, New York, NY, but excluding all other employees, including sales, stock, and shipping employees, office and clerical employees, and guards, professional employees, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On or about October 11, 2006, the Union, by letter, has requested the Respondent to meet and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. On or about October 20, 2006, the Respondent refused to recognize and

¹ In paragraph 3 of its answer, the Respondent denies sufficient knowledge or information regarding the Union’s status as a labor organization within the meaning of Sec. 2(5) of the Act. However, in the underlying representation proceeding, the Respondent entered into a Stipulated Election Agreement in which it effectively stipulated that the Union is a labor organization. Accordingly, we find that the Respondent’s answer in this regard does not raise any issue warranting a hearing. See, e.g., *Spruce Co.*, 321 NLRB 919 fn. 2 (1996).

bargain collectively with the Union. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after October 20, 2006, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Innovative Facility Services, LLC, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Local 3, Retail, Wholesale and Department Store Union, UFCW, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All nonsupervisory housekeeping employees employed by the Employer at the Bloomingdale's store located at 504 Broadway, New York, NY, but excluding all other employees, including sales, stock, and shipping employees, office and clerical employees, and guards, professional employees, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 20, 2006.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 18, 2007

Peter C. Schaumber, Member

Peter N. Kirsanow, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain with Local 3, Retail, Wholesale and Department Store Union,

UFCW, as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All nonsupervisory housekeeping employees employed by the Employer at the Bloomingdale's store located at 504 Broadway, New York, NY, but excluding all other employees, including sales, stock, and shipping employees, office and clerical employees, and guards, professional employees, and supervisors as defined in the Act.

INNOVATIVE FACILITY SERVICES, LLC